

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-1

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In re:

NEW ENGLAND MOTOR FREIGHT, INC.,
et al.,

Debtors.¹

Chapter 11

Case No. 19-12809 (JKS)

(Jointly Administered)

**APPLICATION PURSUANT TO LOCAL BANKRUPTCY RULE 9021-1(b)
FOR ENTRY OF CONSENT ORDER IN LIEU OF MOTION
GRANTING RELIEF FROM THE AUTOMATIC STAY
TO VFS US LLC**

**TO: HONORABLE JOHN K. SHERWOOD
UNITED STATES BANKRUPTCY JUDGE**

The Application of VFS US LLC (“VFS US”), a creditor of the above-captioned debtors-in-possession (collectively, the “Debtors”), by its attorneys, McElroy, Deutsch, Mulvaney & Carpenter, LLP, respectfully represents:

1. This Application is made pursuant to D.N.J. LBR 9021-1(b).

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

2. This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (G). Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

3. All parties who are entitled to notice of this Application have affixed their consents to the Consent Order which is submitted herewith,² including the Official Committee of Unsecured Creditors appointed in the above-captioned chapter 11 cases (the “Committee” and, collectively with VFS US, and the Debtors, the “Parties”).

4. As set forth below, this Application is necessary to allow VFS US to conduct a private sale of a single unit of the Debtor’s rolling stock collateral, as identified in the Consent Order (the “Collateral”), that was not included in the auctions conducted by the Debtors and Taylor & Martin, Inc. (“T&M”) pursuant to the Court’s *Order Authorizing the Debtors to Sell at Auction Substantially all of Debtor NEMFs Personal Property Assets Free and Clear of All Liens, Claims, Interests and Encumbrances* [Dkt. No. 434] (the “NEMF Auction Sale Order”).

BACKGROUND

5. On February 11, 2019 (the “Petition Date”), each of the above-captioned Debtors filed a voluntary petition for relief under chapter 11, title 11, United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”), thereby initiating the above-captioned chapter 11 cases (the “Chapter 11 Cases”). The Debtors, as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, are engaged in an orderly liquidation of their assets and wind-down of their businesses, toward the goal of preserving and maximizing the value of their assets for all creditors.

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Consent Order.

6. On April 8, 2019, the Court entered the NEMF Auction Sale Order, which authorized the sale of Debtor New England Motor Freight's ("NEMF") "Equipment," pursuant to an Engagement Agreement between the Debtors and T&M. Subsequent thereto, the Court entered an Order in aid of the NEMF Auction Sale Order [Dkt. No. 629], which expanded the scope of the auctions by authorizing the sale of additional Equipment owned by Debtors other than NEMF. From approximately late May 2019 through mid-July 2019, T&M sold the Equipment through auctions conducted at various locations (the "Auctions").

7. The Collateral consists of a single tractor in which VFS US has a perfected security interest. For various reasons, the Collateral was not included by T&M in the Auctions. Upon information and belief, the Collateral was not included in the Auctions due in part because unbeknownst to the Debtors, it was located at a dealership in Des Plaines, Illinois.

8. The Parties now desire for the Collateral to be released to VFS US and to be sold by VFS US through a private sale with the cooperation and assistance of the Debtors and/or T&M, to the extent necessary and desirable by the Parties.

RELIEF REQUESTED

9. The Debtors and VFS US have agreed, in consultation with the Committee, as set forth in greater detail in the Consent Order, that VFS US shall have relief from the automatic stay, solely with respect to the Collateral, for the purpose of liquidating the Collateral through a private sale, in a commercially reasonable manner and consistent with all applicable law, however, the Debtors and the Committee waive notice of the sale, including but not limited to notice of the time and place of the sale.

10. The Consent Order is authorized under 11 U.S.C. § 362(d)(1) and (d)(2), respectively. "Cause" exists to grant VFS US stay relief because it is unlikely that the Debtors

could liquidate the Collateral in a more efficient and value-maximizing manner. Further, the Debtors believe it is unlikely that the estates have any equity in the Collateral, and it is no longer necessary to their reorganization efforts. To the extent necessary, the Consent Order is also authorized under Fed. R. Bankr. P. 9019(a) because it is fair and equitable and in the best interests of the estate. *See, e.g., In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *In re McDermott*, 2008 WL 877964 at *4-5 (Bankr. D.N.J. Mar. 27, 2008).

WHEREFORE, VFS US seeks the entry of the Consent Order, which is submitted herewith, pursuant to D.N.J. LBR 9021-1.

Dated: August 28, 2019

**McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP**

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